IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10808 OF 2004

Shri Manohar Gokul Sharma... Petitioner

versus

Addl.Collector (Enc) & ors.. Respondents

Mr.S.S.Lanke for Petitioner

Ms.S.S.Bhende, Assistant Government Pleader for Respondents

**CORAM : D.G.KARNIK, J**

**DATED : 17th February, 2006**

P.C.

1. Heard learned counsel for the petitioner.

2. By this petition, the petitioner challenges the order dated 11th October, 2004 rejecting the review application filed by the petitioner under section 257 of the Maharashtra Land Revenue Code, 1966.

3. The petitioner is occupying an unauthorised hut situated on a part of land bearing Gat No.1053 of village Gazder band, Santacruz (West) Mumbai. After issuing him a notice under section 50 (3) of the Maharashtra Land Revenue Code, 1966 the Tahsildar by an order dated 30th April, 2001 passed an order for removal of the unauthorised

hut. The order was confirmed in appeal by the Deputy Collector on 27th September, 2001. Revision Application filed before the Additional Collector was also dismissed on 16th January, 2002. A second revision filed before the Additional Commissioner met with the same fate. The review application was also dismissed and that order is impugned in this Writ Petition.

4. Learned counsel for the petitioner submits that notice under section 50 (3) of the Maharashtra Land Revenue Code, 1966 was not served on the petitioner and therefore all the orders are bad-in-law. In para 3 of the order dated 25th May, 2001 the Tahsildar has noted that despite notice the petitioner was absent on the date fixed for hearing. I called upon the learned counsel for the petitioner to show me a copy of the appeal memo filed before the Sub-Divisional Officer disputing this statement and/or contending that notice under section 50 (3) of the Maharashtra Land Revenue Code, 1966 was not served. Learned counsel is unable to produce a copy pointing out that such a grievance was ever raised before the Sub-Divisional Officer. In his order dated 17th May, 2001 passed in appeal, the Deputy Collector has noted that after giving notice to the petitioner under section 50 (3) of the

Maharasahtra Land Revenue Code, 1966 his hut was declared as unauthorised. I called upon the petitioner to show me copy of the revision memo filed before the Additional Commissioner disputing this statement. Learned counsel is unable to produce a copy showing that this statement made in the order of the Deputy Collector was ever disputed in the revision application before the Additional Commissioner. In view of this, I am unable to accept the contention which is raised for the first time in this Writ Petition that notice under section 50 (3) of the Maharashtra Land Revenue Code, 1966 was not served on the petitioner.

5. I have perused the copies of the documents annexed to the Writ Petition. Most of the documents are after the relevant date of 1st January, 1995. The identity card issued by the Election Commission and the ration cards are issued after 1st January, 1996 and they do not show that the hut was in existence prior to 1st January, 1995. Only the huts which have been erected prior to 1st January, 1995 on government lands are regularised. Some other documents which are of the year prior to 1995 do not show the address of the petitioner to be the disputed hut. In the circumstances, there is no merit in the

petition which is hereby rejected.

**(D.G. KARNIK,**J)